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VETTER, DANIEL	
ART UNIT	**PAPER NUMBER**
3628	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/630,432	DOSANJH, RAJ	
	Examiner	Art Unit	
	Daniel P. Vetter	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 March 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-13,15-21,23 and 24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4-13,15-21,23 and 24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claims 1-24 were previously pending in this application. Claims 1, 4, 6-7, 12-13, 15-21, and 23-24 have been amended and claims 3, 14, and 22 canceled in the response dated March 20, 2007. Claims 1-2, 4-13, 15-21, and 23-24 are currently pending in this application.

Response to Amendment

1. Applicant's amendments to the claims filed March 20, 2007 overcome their rejections for lack of antecedent basis under § 112, second paragraph as well as their rejections under § 101 and, as such, these rejections are withdrawn.

Response to Arguments

2. Applicant's arguments filed March 20, 2007 regarding the rejection of claims under § 112, second paragraph for failure to include alternative limitations have been fully considered and are persuasive. These rejections are withdrawn.

3. Applicant's arguments filed March 20, 2007 regarding rejections of claims 1-24 under § 103(a) have been fully considered but they are not persuasive.

4. Applicant argues on pages 15, 21, 26, and 28 regarding independent claims 1, 12, 23, and 24 that Takriti in view of Pitchford, et al. does not teach the features of the claimed invention because "an input of a particular or individual consumer of the fuel being supplied is not part of the Takriti system." However, this feature is not recited in

the rejected claims. The claims recite "receiving information from the customer specifying the commodity required" which is taught by Takriti at least at column 7, lines 65-67; and in further detail at column 4, lines 17-24. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

5. Applicant further argues on pages 17 and 23 regarding claims 5 and 16 that "Takriti fails to teach or suggest that nature of growth of usage of a commodity by a customer is characterized and a level of commercial risk for the customer is determined." However, as previously set forth, Takriti shows these limitations at least at column 7, lines 59-60; and column 8, lines 60-62. Even if it could be shown that Takriti does not sufficiently teach that the invention can be used on a per-customer basis and also that the claims as written do not read on a system and method that is used for more than one customer, the disclosure of Pitchford, et al. makes it clear that the invention can be used on a per-customer basis (*see, e.g.*, Abstract; the system of Pitchford, et al. is performed "at each user site").

6. Applicant further argues on pages 17 and 23 regarding claims 5 and 16 that the characterizations of the growth and commercial risk levels are not non-functional descriptive material and are entitled to patentable weight because they are "requisite to performing one or more embodiments to determine a price for a commodity." However,

the claimed invention, specifically the aspect of price determination, is not functionally related to the characterizations of "constant growth, explosive growth, or volatile growth" and "low, high, or intermediate" commercial risk. The price is determined based upon the nature of growth and level of risk; but the names given to the growth and the level of risk do not posses a functional relationship with the price determination aspect of the claimed invention. Claim limitations must be functionally related to the substrate to be given patentable weight, and non-functional descriptive material cannot render unobvious an invention that otherwise would have been obvious. MPEP 2106.01; *In re Gulack*, 703 F.2d 1381, 1385; 217 USPQ 401, 404 (Fed. Cir. 1983). Absent a new and unobvious functional relationship in the invention as claimed, these characterizations do not alter how the price is determined and therefore will not distinguish the claimed invention from the prior art in terms of patentability. *See In re Ngai*, 367 F.3d 1336, 70 USPQ2d 1862 (Fed. Cir. 2004). The utility of the invention can still be achieved regardless of what terms are used to describe the growth and risk levels.

7. Applicant further argues on pages 17 and 23 regarding claims 6 and 17 that "Takriti fails to teach or suggest that a customer selects or specifies a commodity as input to the claimed system." However, as previously set forth, Takriti shows these limitations at least at column 8, line 49; column 7, lines 65-67; and in further detail at column 4, lines 17-24; and Applicant has not provided a reasoned analysis of why these

teachings fail to teach or suggest this limitation. Furthermore, any commodity delivery method or system must inherently include an element of customer specification/request or it would be inoperable and have no utility, as the commodity would never be provided but for a customer requesting it, at least at one initial juncture.

8. Applicant on pages 18 and 24 sets forth a traversal of the findings of Official Notice regarding claims 8-10 and 19-21. Applicant begins by stating that the findings were improper because the claims describe "determining a price for a commodity for a customer based upon input received from the customer, and it has not been established that these features are capable of instant and unquestionable demonstration as being well-known within the context of the claimed subject matter." However, Official Notice was not relied upon for this limitation. As previously set forth in the Office Action dated December 20, 2006, and again below, Tikriti in view of Pitchford, et al. teaches this limitation. Applicant further states that "it has not been established that determining the price of commoditized solution elements in the information technology industry" is well known and that "specific factual findings predicated on sound technical and scientific reasoning in support of the conclusion of common knowledge are not provided in the Office Action." However, specific factual findings were provided by the Examiner on pages 20 and 21 of the Office Action and include "the information technology industry uses various commodities, such as power and processor availability;" "the information

technology industry uses various commodities which must be priced by their suppliers;" "the information technology industry uses the commodities of storage capacity, server processing capability, and support service;" and commodities are "some of the main inputs into computers and computer networks, which are the backbone of the information technology industry." In responding to these rejections, Applicant has not stated or provided a reasoned analysis of why the above noticed facts are not considered common knowledge or well-known in the art as required by MPEP 2144.03 to adequately traverse a finding of Official Notice. Even so, the Examiner has provided the following references which provide documentary support for the above factual assertions:

i. *Call for Participation: Seventh Workshop on Hot Topics in Operating Systems*, (Reference U of the PTO-892 part of paper no. 20061207) describes some inputs into the information technology industry and includes memory, networking, file systems, processing, performance evaluation as well as including concerns regarding power management and quality of service.

ii. Thefreedictionary.com, *information technology*, (Reference U of the attached PTO-892) teaches that this term describes the industry responsible for processing and transmitting information using computers.

iii. Thefreedictionary.com, *commodity*, (Reference V of the attached PTO-892) teaches that a commodity is a good or service to be sold for a price by a supplier.

iv. Redhat, *The Storage Spectrum*, (Reference W of the attached PTO-892) teaches that the information technology industry uses storage and that storage methods are of limited capacities.

v. Redhat, *Processing Power* (Reference X of the attached PTO-892) teaches that the information technology industry consumes processing power and that processors are of limited capabilities.

vi. Thefreedictionary.com, *tech support*, (Reference UU of the attached PTO-892) teaches that the information technology industry uses technical support services that are of limited availability and cost certain fees.

The above references are only cited to substantiate the previously stated findings of Official Notice by the Examiner and therefore do not result in a new basis for rejection.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 1-2, 4-7, 11-13, 15-18, and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takriti, U.S. Pat. No. 6,021,402 (Reference A of the PTO-892

part of paper no. 20061207) in view of Pitchford, et al., U.S. Pat. No. 6,327,541 (Reference B of the PTO-892 part of paper no. 20061207).

11. As per claim 1, Takriti teaches a method of determining a price at which a supplier provides a commodity to a customer, the method being performed by the supplier and comprising: characterising nature of growth of the customer's usage of the commodity (column 7, lines 59-60); receiving information from the customer specifying the commodity required (column 7, lines 65-67); and determining a price for the commodity used (column 7, lines 30-31), the determined price being dependent on a level of commercial risk associated with the nature of growth of the customer's usage of the commodity (column 8, lines 60-62), and an industry average price for the commodity at the time of determination of the price (column 5, lines 2-3). Takriti does not explicitly teach receiving notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used; and if the usage monitoring indicates that the customer has a need for more or less of the commodity, the method further comprises effecting provision of more or less of the commodity from the supplier to the customer. Pitchford, et al. teaches receiving notification of the use of a quantity of the commodity by the customer (column 3, lines 7-11), and that the determined price is dependent on the quantity of the commodity used (column 10, line 26). It would have been prima facie obvious to one having ordinary

skill in the art at the time of invention to incorporate receiving notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used into the method taught by Takriti in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67). Pitchford, et al. further teaches if the usage monitoring indicates that the customer has a need for more or less of the commodity, the method further comprises effecting provision of more or less of the commodity from the supplier to the customer (column 5, lines 11-14). It would have been prima facie obvious to incorporate if the usage monitoring indicates that the customer has a need for more or less of the commodity, the method further comprises effecting provision of more or less of the commodity from the supplier to the customer into the method taught by Takriti in view of Pitchford, et al. in order to meet the particular requirements of a particular user site (as taught by Pitchford, et al., column 5, line 12).

12. As per claim 2, Takriti in view of Pitchford, et al. teaches the method of claim 1 as described above. Pitchford, et al. further teaches that the step of receiving notification of the use of a quantity of the commodity further comprises monitoring the customer's usage of the commodity (column 3, line 8). It would have been prima facie obvious to incorporate monitoring the customer's usage of the commodity into the method taught

by Takriti in view of Pitchford, et al. in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67).

13. As per claim 4, Takriti in view of Pitchford, et al. teaches the method of claim 2 as described above. Takriti further teaches the customer's usage history of the commodity, as monitored by the supplier, is used to dynamically reassess the nature of growth of the customer's usage of the commodity, and the associated level of commercial risk (column 7, lines 59-60; column 8, line 61).

14. As per claim 5, Takriti in view of Pitchford, et al. teaches the method of claim 1 as described above. Takriti teaches that the nature of growth of the customer's usage of the commodity is characterised (column 7, lines 59-60) and that a level of commercial risk is determined (column 8, line 53). However, Takriti in view of Pitchford, et al. does not teach that the characterizations are constant growth, explosive growth or volatile growth and that the level of commercial risk is low, high or intermediate. These characterizations and levels are merely recitations of non-functional descriptive material. It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the characterizations are constant growth, explosive growth or volatile growth and that the level of commercial risk is low, high or intermediate into the method taught by Takriti in view of Pitchford, et al. because non-

functional descriptive material cannot render non-obvious an invention that would otherwise have been obvious. *In re Gulack*, 703 F.2d 1381, 1385; 217 USPQ 401, 404 (Fed. Cir. 1983).

15. As per claim 6, Takriti in view of Pitchford, et al. teaches the method of claim 1 as described above. Takriti further teaches in the step of receiving information from the customer specifying the commodity required, the commodity is selected from a plurality of alternatives in a same category of commodity (column 8, line 49; Examiner is interpreting types of fuel as alternatives within the same category of the commodity electricity).

16. As per claim 7, Takriti in view of Pitchford, et al. teaches the method of claim 6 as described above. Pitchford, et al. further teaches the same category of commodity is one of a plurality of categories and a selection is made from more than one category (column 7, lines 15-20), and wherein the alternatives available for selection in each category are modified in response to customer's preference data, or on the basis of previously-selected commodities (column 5, lines 2-4; column 6, lines 56-61). It would have been prima facie obvious at the time of invention to incorporate the category of commodity is one of a plurality of categories and a selection is made from more than one category, and wherein the alternatives available for selection in each category are modified in response to customer's preference data, or on the basis of previously-

selected commodities into the method taught by Takriti in view of Pitchford, et al. in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67).

17. As per claim 11, Takriti in view of Pitchford, et al. teaches the method of claim 1 as described above. Takriti further teaches the method is executed using a computer program (Abstract).

18. As per claim 12, Takriti teaches a computer readable storage medium for storing a computer program (Abstract) operable to determine a price at which a supplier provides a commodity to a customer, the computer program being operable to: receive input characterising nature of growth of the customer's usage of the commodity (column 7, lines 59-60); receive input specifying the commodity required by the customer (column 7, lines 65-67); and determine a price for the commodity used (column 7, lines 30-31), the determined price being dependent on a level of commercial risk associated with the nature of growth of the customer's usage of the commodity (column 8, lines 60-62), and an industry average price for the commodity at the time (column 5, lines 2-3). Takriti does not explicitly teach that the program is operable to receive input comprising notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used; and if the usage

data indicates that the customer has a need for more or less of the commodity, the program is operable to effect provision of more or less of the commodity from the supplier to the customer. Pitchford, et al. teaches that the program is operable to receive input comprising notification of the use of a quantity of the commodity by the customer (column 3, lines 7-11), and that the determined price is dependent on the quantity of the commodity used (column 10, line 26). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate that the program is operable to receive input comprising notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used into the program taught by Takriti in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67). Pitchford, et al. further teaches if the usage data indicates that the customer has a need for more or less of the commodity, the program is operable to effect provision of more or less of the commodity from the supplier to the customer (column 5, lines 11-14). It would have been prima facie obvious to incorporate if the usage data indicates that the customer has a need for more or less of the commodity, the program is operable to effect provision of more or less of the commodity from the supplier to the customer into the program taught by Takriti in view of Pitchford, et al. in order to meet

the particular requirements of a particular user site (as taught by Pitchford, et al., column 5, line 12).

19. As per claim 13, Takriti in view of Pitchford, et al. teaches the medium of claim 12 as described above. Pitchford, et al. further teaches the program operable to receive data from a remote device specifying the usage of the commodity by the customer (column 5, lines 15-20). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the program operable to receive data from a remote device specifying the usage of the commodity by the customer into the program taught by Takriti in view of Pitchford, et al. in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67).

20. As per claim 15, Takriti in view of Pitchford, et al. teaches the medium of claim 13 as described above. Takriti further teaches the program operable to interpret the customer's usage history of the commodity to dynamically reassess the nature of growth of the customer's usage of the commodity, and hence the associated level of commercial risk (column 7, lines 59-60). The limitation "and hence the associated level of commercial risk" is merely a statement of intended result and is afforded no patentable weight.

21. As per claim 16, Takriti in view of Pitchford, et al. teaches the medium of claim 12 as described above. Takriti teaches that the nature of growth of the customer's usage of the commodity is characterised (column 7, lines 59-60) and that a level of commercial risk is determined (column 8, line 53). However, Takriti in view of Pitchford, et al. does not teach that the characterizations are constant growth, explosive growth or volatile growth and that the level of commercial risk is low, high or intermediate. These characterizations and levels are merely recitations of non-functional descriptive material. It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the characterizations are constant growth, explosive growth or volatile growth and that the level of commercial risk is low, high or intermediate into the program taught by Takriti in view of Pitchford, et al. because non-functional descriptive material cannot render non-obvious an invention that would otherwise have been obvious. *Gulack*, 217 USPQ at 404.

22. As per claim 17, Takriti in view of Pitchford, et al. teaches the medium of claim 12 as described above. Takriti further teaches when receiving input specifying the commodity required by the customer, the commodity is selected from a plurality of alternatives in a same category of commodity (column 8, line 49; Examiner is interpreting types of fuel as alternatives within the same category of the commodity electricity).

23. As per claim 18, Takriti in view of Pitchford, et al. teaches the medium of claim 17 as described above. Pitchford, et al. further teaches the same category of commodity is one of a plurality of categories and a user makes a selection from more than one category (column 7, lines 15-20), and wherein the computer program modifies the alternatives available for selection in each category following input of customer preference data, or on the basis of previously-selected commodities (column 5, lines 2-4; column 6, lines 56-61). It would have been prima facie obvious at the time of invention to incorporate the category of commodity is one of a plurality of categories and a user makes a selection from more than one category, and wherein the computer program modifies the alternatives available for selection in each category following input of customer preference data, or on the basis of previously-selected commodities into the program taught by Takriti in view of Pitchford, et al. in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67).

24. As per claim 23, Takriti teaches a price determination device comprising a processor (Abstract) operable to implement a method of determining a price at which a supplier provides a commodity to a customer, the method comprising: characterising nature of growth of the customer's usage of the commodity (column 7, lines 59-60); receiving information from the customer specifying the commodity required (column 7,

lines 65-67); and determining a price for the commodity used (column 7, lines 30-31), the determined price being dependent on a level of commercial risk associated with the nature of growth of the customer's usage of the commodity (column 8, lines 60-62), and an industry average price for the commodity at the time of determination of the price (column 5, lines 2-3). Takriti does not explicitly teach receiving notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used. Pitchford, et al. teaches receiving notification of the use of a quantity of the commodity by the customer (column 3, lines 7-11), and that the determined price is dependent on the quantity of the commodity used (column 10, line 26). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate receiving notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used into the device taught by Takriti in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67).

25. As per claim 24, Takriti teaches price determination device comprising a processor (Abstract) executing a program to determine a price at which a supplier provides a commodity to a customer, the program being operable to cause the

processor to: receive input characterising nature of growth of the customer's usage of the commodity (column 7, lines 59-60); receive input specifying the commodity required by the customer (column 7, lines 65-67); and determine a price for the commodity used (column 7, lines 30-31), the determined price being dependent on a level of commercial risk associated with the nature of growth of the customer's usage of the commodity (column 8, lines 60-62), and an industry average price for the commodity at the time (column 5, lines 2-3). Takriti does not explicitly teach the device operable to receive input comprising notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used. Pitchford, et al. teaches the device operable to receive input comprising notification of the use of a quantity of the commodity by the customer (column 3, lines 7-11), and that the determined price is dependent on the quantity of the commodity used (column 10, line 26). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the device operable to receive input comprising notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used into the device taught by Takriti in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67).

26. Claims 8-10 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takriti in view of Pitchford, et al. as applied to claims 1 and 12 above, and further in view of Official Notice.

27. As per claim 8, Takriti in view of Pitchford, et al. teaches the method of claim 1 as described above. Takriti in view of Pitchford, et al. does not teach that the commodity price determination is done in the information technology industry. Official Notice is taken that it is old and well established that the information technology industry uses various commodities, such as power and processor availability (see e.g., *Call for Participation: Seventh Workshop on Hot Topics in Operating Systems*, Reference U of the PTO-892 part of paper no. 20061207; hereinafter "HotOS-VII"). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to have incorporated that the commodity price determination is done in the information technology industry into the method taught by Takriti in view of Pitchford, et al. because the information technology industry uses various commodities which must be priced by their suppliers.

28. As per claim 9, Takriti in view of Pitchford, et al. and Official Notice teaches the method of claim 8 as described above. Takriti in view of Pitchford, et al. does not teach the categories of commodities include storage capacity, server processing capability, and level of support service required. Official Notice is taken that it is old and well

established that the information technology industry uses the commodities of storage capacity, server processing capability, and support service (see e.g., HotOS-VII). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to have incorporated that the categories of commodities include storage capacity, server processing capability, and level of support service required into the method taught by Takriti in view of Pitchford, et al. and Official Notice because they are some of the main inputs into computers and computer networks, which are the backbone of the information technology industry.

29. As per claim 10, Takriti in view of Pitchford, et al. and Official Notice teaches the method of claim 9 as described above. Official Notice teaches the commodities of storage capacity or server processing capability as described above. Pitchford, et al. further teaches the step of receiving notification of the use of a quantity of the commodity is performed using monitoring and reporting software or hardware installed on a server of the customer (column 6, lines 35-45). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate receiving notification of the use of a quantity of the commodity is performed using monitoring and reporting software or hardware installed on a server of the customer into the method taught by Takriti in view of Pitchford, et al. and Official Notice in order to provide an energy management system that provides data in terms of consumption,

demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67).

30. As per claim 19, Takriti in view of Pitchford, et al. teaches the program of claim 12 as described above. Takriti in view of Pitchford, et al. does not teach that the commodity price determination is done in the information technology industry. Official Notice is taken that it is old and well established that the information technology industry uses various commodities, such as power and processor availability (see e.g., HotOS-VII). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to have incorporated that the commodity price determination is done in the information technology industry into the program taught by Takriti in view of Pitchford, et al. because the information technology industry uses various commodities which must be priced by their suppliers.

31. As per claim 20, Takriti in view of Pitchford, et al. and Official Notice teaches the program of claim 19 as described above. Takriti in view of Pitchford, et al. does not teach the categories of commodities include storage capacity, server processing capability, and level of support service required. Official Notice is taken that it is old and well established that the information technology industry uses the commodities of storage capacity, server processing capability, and support service (see e.g., HotOS-VII). It would have been prima facie obvious to one having ordinary skill in the art at the

time of invention to have incorporated that the categories of commodities include storage capacity, server processing capability, and level of support service required into the program taught by Takriti in view of Pitchford, et al. and Official Notice because they are some of the main inputs into computers and computer networks, which are the backbone of the information technology industry.

32. As per claim 21, Takriti in view of Pitchford, et al. and Official Notice teaches the program of claim 19 as described above. Pitchford, et al. further teaches the data specifying the usage of the commodity by the customer is supplied from monitoring software or hardware installed on a server of the customer (column 6, lines 35-45). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the data specifying the usage of the commodity by the customer is supplied from monitoring software or hardware installed on a server of the customer into the method taught by Takriti in view of Pitchford, et al. and Official Notice in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67).

Conclusion

33. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

34. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel P. Vetter whose telephone number is (571) 270-1366. The examiner can normally be reached on Monday through Thursday from 8am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

THOMAS A. DIXON
PRIMARY EXAMINER